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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,555

11/08/2005

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EXAMINER

KAROL, JODY LYNN

ART UNIT

PAPER NUMBER

1609

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/531,555	RODRIGUES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jody L. Karol	1609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/15/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/8/2005 and 3/13/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

This application is a 371 of PCT/BR03/00147 International Filing Date: 10/15/2003, which claims priority to PR 0207052.9. Claims 4-7 have been amended as per applicant's preliminary amendment dated 4/15/2005. Accordingly, claims 1-7 are pending and examined on the merits herein.

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) filed on 11/8/20105 and 3/13/2006 are in compliance with the provisions of 37 CFR 1.97. However, one of the references was not considered because it was not in English, and no English translation or statement of relevancy was provided. The listing of the International Search Report for PCT/BR03/00147 as a reference is not proper.

### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority based on Application No. 0207052.9 filed in the Brazil on 10/15//2002.

### ***Specification***

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

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As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

4. The disclosure is objected to because of the following informalities: the phrase "not being using any product" (see page 1, lines 31-32) is not clear. In addition, the use of the term "trade name" on pages 8-9 to refer to color options for the lipsticks is confusing. For example, the composition with the trade name "Piano" is only identified as red and containing a composition known from the prior art. It is not clear what components are actually present in this composition, or in the other compositions referred to by trade names.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The molecular weight of 400 does<sup>not</sup> have units. For examination purposes, it is assumed the molecular weight is in Daltons.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Scavone et al. (US 6,258,346 B1).

Claim 1 is directed to a solid cosmetic composition comprising a structure agent that is a combination consisting of a saturated straight-chain polymer and an agglutinating agent for the polymer that consists of a glyceride. The terms comprising and consisting are considered to be broad and open-ended. Claim 4 further specifies that the agglutinating agent is tribehenin. Claim 5 further limits the saturated straight-chain polymer of claim 1 to being present in 2 to 20% by weight, based on the total

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weight of the composition. Claim 6 further limits the agglutinant agent of claim 1 to being present in 3 to 15% by weight, based on the total weight of the composition.

Scavone et al. teaches a solid cosmetic stick composition comprising about 10 to 95% by weight of a liquid carrier and about 1 to 60% of a solid polymorphic triglyceride gellant (see abstract). Scavone et al. further teaches that suitable liquid carriers include linear non-volatile silicones, also known as siloxane polymers (see column 9, lines 66-67 and column 10, lines 1-17). Linear siloxane polymers, such as dimethicone, are considered to be saturated linear polymers as defined by the instant claim 1.

Therefore all the limitations of claims 1 and 5-6 are met.

Scavone et al. also teaches that a suitable triglyceride gellant is tribehenin (see column 6, lines 62-66). Examples 2-4 and 7 comprise dimethicone and tribehenin. Therefore, all of the limitations of claim 4 are met.

7. Claims 1-2 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by United Kingdom patent application 2 167 662 A (Dick et al.) published 6/4/1986.

Claims 1 and 4-6 are discussed above. Claim 2 further limits the saturated straight-chain polymer to a saturated linear polyethylene.

Dick et al. teaches cylindrical solid compositions that have an insoluble polymer and glycerol ester matrix containing an active substance, that can be used as subcutaneous (under the skin) implants (see abstract and page 1, lines 5-9). Dick et al. also discloses a specific example where 15% of the composition is microporous polyethylene (HDPE) and 15% is glycerol behenate (see page 3, lines 17-30). Although

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not explicitly stated, the percentages are assumed to be weight percentages based on the weight of zeranol (12 mg) and the total weight of the implant (40 mg). Additionally, HDPE is high-density polyethylene, a well-known linear polyethylene, and glycerol behenate is synonymous with glyceryl behenate or tribehenin. Therefore, all the limitations of Claims 1-2 and 4-6 are met.

8. Claims 1-2 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillipe et al. (US 5,684,178).

Claims 1-2 and 5-6 are discussed above. Claim 7 further limits the composition of claim 1 to being in the form of a lipstick.

Phillipe et al. teaches lipstick compositions that contain a polyethylene wax and 2-ethylhexyl glyceryl behenate (see example II, IV, and V). The polyethylene used is Polywax 500, which is a crystalline linear polyethylene with a molecular weight of 500, and is present in roughly 12.5% by weight of the composition (see example IV). The 2-ethylhexyl glyceryl behenate is a derivative of glyceryl behenate, a glyceride, and is present in roughly 11% by weight of the composition (see example IV). Therefore, all the limitations of claims 1-2 and 5-7 are met.

9. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Mateu et al. (WO 02/30368). The English language equivalent (US 7,211,245 B2) is used for examination purposes.

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Claims 1-2 and 5-6 are discussed above. Claim 3 further limits the polyethylene of claim 2 to having a molecular weight of approximately 400.

Mateu et al. teaches a mascara composition comprising an oil phase comprising 2-10% by weight of an unbranched polyethylene wax with a molecular weight of 400 to 1,500 Dalton (see abstract and examples 3-4). The unbranched polyethylene wax is considered to be a saturated linear polyethylene as required by claim 2. Furthermore, the polyethylene used in the compositions is preferably Perfomalene 400®, a saturated linear polyethylene with a molecular weight of 400 Daltons (see column 2, lines 30-33 and example 4). Mateu et al. also teaches that the oil phase of the composition can contain additional waxes such as glycerol monostearate in 1-5% by weight (see column 2, lines 19-24 and examples 1-4). Glyceryl monostearate is considered to be a glyceride agglutinating agent as defined by the instant claims. Therefore all the limitations of claims 1-3 and 5-6 are met.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scavone et al. (US 6,258,346 B1) view of Mateu et al. (WO 02/30368).



Scavone et al. is important for teaching a composition comprising a saturated linear siloxane polymer and a triglyceride gellant as discussed above. Scavone et al. gives examples sunscreen and cosmetic stick compositions where dimethicone and Sychrowax HGLC (C<sub>18</sub>-C<sub>36</sub> acid glycol ester) are present as the linear polymer and triglyceride respectively (see column 15, Tables 5-6), and what is discussed above.

The solid cosmetic sticks include moisturizers, make-up, foundations, deodorants, etc. (see column 1, lines 14-20), and are defined as stick compositions that are suitable for topical application to the skin (see column 2, lines 26-29). Scavone et al. does not disclose any examples where the cosmetic stick is specifically defined as a lipstick. However, it would be obvious to one of ordinary skill in the art at that the time the invention was made that a solid cosmetic stick applied to the skin and characterized as a makeup, could be applied to the skins of the lips and therefore be considered a lipstick since it was clearly within the purview of the skilled artisan to do so.

Additionally, Scavone et al. does not disclose any embodiments where saturated linear polyethylenes are used with or instead of the linear polysiloxanes. It is also noted that the siloxanes used are in the liquid phase (see column 9, lines 66-67).

Mateu et al. teaches a mascara composition where Performalene 400®, a saturated linear polyethylene with a molecular weight of 400 Daltons unbranched polyethylene wax with a molecular weight of 400 Daltons, is used in the oil phase to provide a solid, but flexible polyethylene, and therefore a flexible product (see column 1, lines 62-65 and column 2, lines 30-33). Therefore, it would be obvious to one of ordinary skill in the art, to use the linear polyethylene with a molecular weight of 400

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Daltons as taught by Mateu et al., to replace or in addition to the liquid siloxane polymer in the composition taught by Scavone et al. to modify the flexibility properties of the composition.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

### ***Conclusion***

No claims are allowed.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

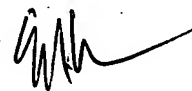
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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jody L. Karol whose telephone number is (571) 274-3283. The examiner can normally be reached on 8:30 am - 5:00 pm Mon-Fri EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Stucker can be reached on (571) 272-0911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

JLK



**MICHAEL MELLER  
PRIMARY EXAMINER**